IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

FIRST APPEAL NO.525 OF 2000

Dhadge Manoj Madhavrao ..Appellant.
(Orig. Plff.)

Vs.

Dhadge Madhavrao Maruti
& Ors. ..Respondents.
(Orig. Defts.)

Mr.P.B.Shah, Advocate for the Appellant.

Mr.S.A.Sawant, Advocate for Respondent No.2.

Mr.Madhav Jamdar, Advocate for Respondent No.5.

CORAM: S.RADHAKRISHNAN AND
S.J.VAZIFDAR, JJ.

DATED: 17TH SEPTEMBER, 2004

P.C. :

All the learned counsel for the parties makes a statement that no detailed reasons be given for the order proposed to be passed.

2. By this Appeal the Appellant original Plaintiff is challenging the impugned judgment and order dated 13th March, 2000 passed by the learned IIIrd Joint Civil Judge, Junior Division, Pune whereby the

learned Judge has rejected the plaint and returned the same under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 i.e. on the ground that the suit appeared to be barred by law of limitation.

3. After hearing the parties for some time and after perusal of the plaint and the written statement of the Defendants as well as the impugned judgment, we are clearly of the view that the issue whether the suit is barred by law of limitation or not is not a mere question of law but it is a mixed question of fact and law in the instant case and, as such, the same would not have been decided without recording evidence.

4. Under the aforesaid facts and circumstances, without going into the merits and demerits of the impugned judgment, we set aside the same and remand back the matter to the trial Court to enable the trial Court to frame a preliminary issue as to limitation and allow all the parties to lead evidence in that behalf and decide the same as expeditiously as possible, preferably by 31st December, 2004.

5. All the parties are agreeable to maintain status-quo as of today till the trial Court decides

the aforesaid preliminary issue.

6. It is made clear that all the contentions raised by all the parties are kept specifically open. It is also made clear that in the event the trial Court were to hold that the suit is not barred by the law of limitation, after recording the evidence, the trial to proceed thereafter.

7. All the learned counsel appearing on behalf of the parties agree that the parties in the above suit will appear before the learned trial Court Judge on 4th October, 2004 to seek appropriate directions in the above matter.

8. The Defendant No.1 is granted liberty to file a written statement in the above suit within a period of three weeks from today before the trial Court.

The Appeal stands disposed of in the above terms with no orders as to costs.

(S. Radhakrishnan, J.)

(S.J. Vazifdar, J.)